

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
SUPPLEMENTAL
BRIEF**

-I-
77-1485

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MAR 29 1978

UNITED STATES OF AMERICA,
Appellee,

-vs-

GEORGE W. NICHOLAS and
VINCENT BROWN,
Appellant.

NO. 77-1485

PLEASE RETURN TO
RECORDS ROOM

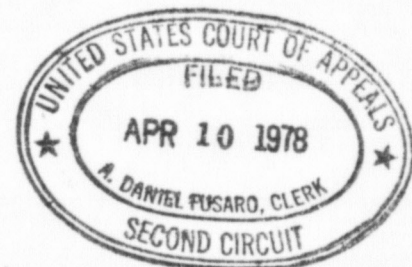
SUPPLEMENTAL BRIEF OF APPELLANTS

ON APPEAL FROM THE JUDGEMENT OF
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ISSUE PRESENTED FOR REVIEW

I

WHETHER OR NOT THE DISTRICT COURT
ERRED IN NOT GRANTING DEFENDANT'S
MOTION TO SUPPRESS EVIDENCE. WHERE-
BY FORCING THE DEFENDANTS TO ENTER
A GUILTY PLEA TO CHARGES OF ILLEGAL
POSSESSION OF COUNTERFEIT NOTES.



FACTS

That on or about the 15th of May 1973, defendants George Nicholas and Vincent Brown were arrested by patrolmen Patrick Santoli and Francis Kellman of the New York Police Department. And at the time and scene of the arrest said patrolmen discovered within the auto in which the defendants were riding a black shaving kit containing fifty (50) counterfeit notes of twenty (20) dollar denomination.

LAW

Appellant attaches under the heading of LAW . copy of the original supplemental Motion to Suppress Evidence which was considered and denied by the district court. Said Motion being based on the Supreme Court decision rendered in the case of Chadwick vs. United States.

And also appellants cites the 4th and 14th Ammendments of the Constitution of the United States of America.

POINTS OF LAW THAT COMPOSED
ORIGINAL MOTION TO SUPPRESS
EVIDENCE

LAW

EXCERPTS FROM UNITED STATES
VS. CHADWICK, 53 L Ed 2nd 538

Mr. Chief Justice Burger delievering
the opinion of the Court: (Quote)

*

Page 548 (Ib, 6)

" In this case, important Fourth Amendment privacy interests were at stake. By placing personal effects inside a double locked footlocker, respondents manifested an expectation that the contents would remain free from public examination. No less than one who locks the doors of his home against intruders, one who safeguards his possessions in this manner is due the protection of the Fourth Amendment Warrant Clause. There being no exigency, it was unreasonable for the government to conduct this search without the safeguards a judicial warrant provides."

Page 549, Paragraph 6.

" The factors which diminish the privacy aspects of an automobile do not apply to respondent's footlocker. Luggage contents are not open to public view, except as a condition to a border entry or common carrier travel; nor is luggage subject to regular inspections and official scrutiny on a continuing basis. Unlike an automobile, whose primary function is transportation, luggage is intended as a repository of personal effects. In sum, a persons expectations of privacy in personal luggage are substantially greater than in an automobile."

Page 550, footnote 8.

" Respondents principal privacy interests in the footlocker was of course not in the container itself, which was exposed to public view, but in it's contents. A search of the interior was therefore a greater intrusion into

Fourth Amendment values than the impoundment of the footlocker. though surely a substantial infringement with respondent's legitimate expectation that the footlocker's contents would remain private.

Page 551, Paragraph 4.

"....In our view, when no exigency is shown to support the need for an immediate search, the Warrant Clause places the line at the point where the property to be searched comes under the exclusive dominion of the police authority. Respondents were therefore entitled to the protection of the Warrant Clause with the evaluation of a neutral Magistrate, before their privacy interest in the contents of the footlocker were invaded.

Page 551, Footnote 10.

"....Respondent's privacy interests in the contents of the footlocker was not eliminated simply because they were under arrest.

Mr. Justice Brennan, Concurring: (Quote)

*

Page 552, Paragraph 1.

"..... In my view, it is not at all obvious that the agents could legally have searched the footlocker had they seized it after Machado and Leary had driven away with it in their car or " at the time and place of arrest."

Page 552, Footnote 1.

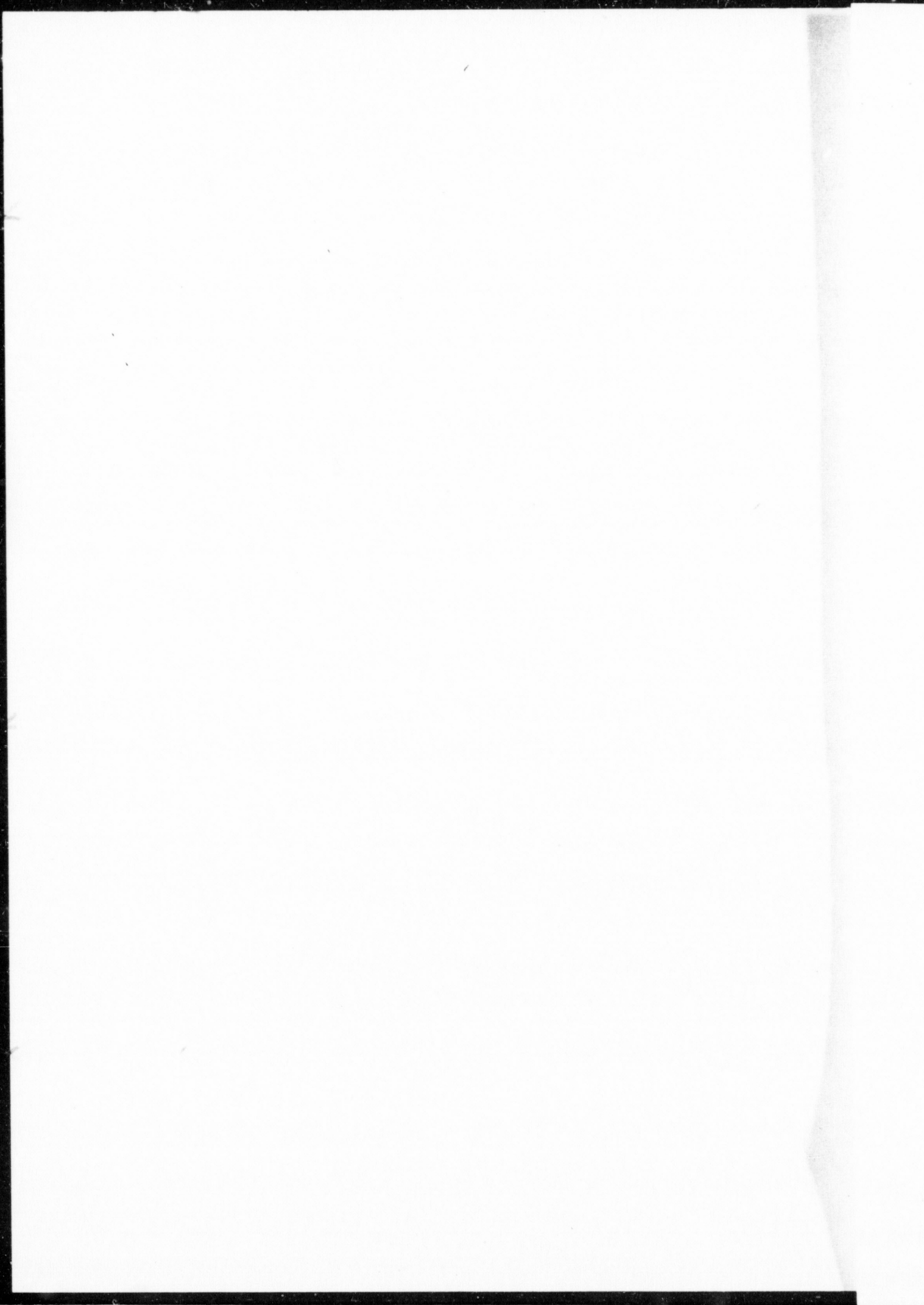
" While the contents of the car could have been searched pursuant to the automobile exception, it is by no means clear that the contents of locked containers found inside a car are subject to search under this exception, any more than they would be if the police found them in any other place.

POINT OF LAW THAT DEFENSE COUNSEL REFUSED TO CITE FOLLOWING THE DISTRICT COURT'S ACCEPTANCE OF THE AFOREMENTIONED INVENTORY SEARCH AS 'PROPER'.

EXCERPTS FROM THE CASE OF: PEOPLE VS. GRANA, COLO. 1974, 527 P. 2d 543. TO WIT:

the "Even if officer's search of impounded automobile which defendant was driving was an inventory search, search of zippered compartment within closed flight bag ~~in~~ found in trunk of auto.....entered a constitutionally protected area of privacy without a warrant and without probable cause and was an unreasonable search."

(The above quoted from U.S.C. Amend. 4.
Note 854.



ARGUMENT

I.

THE DISTRICT COURT ERRED IN NOT GRANTING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE. WHEREBY FORCING DEFENDANTS TO ENTER GUILTY PLEA TO CHARGES OF ILLEGAL POSSESSION OF COUNTERFEIT NOTES.

CONTENTIONS

Appellants contend that the district court erred in not granting Motion to Suppress Evidence at pre-trial Motion to Suppress Evidence Hearing prior to this appeal.

1. That said hearing was incomplete, and that judgement made by district court judge was done before all points of law had been reviewed and argued.
2. That court appointed counsel was incompetent and intentionally hindered or prevented the presentation of certain points of law and evidence that were essential to Appellant's defense.
3. That district court judge disregarded certain creditable and true testimony that supported appellant's arguments.
4. That certain government witnesses lied under oath in collaboration with the U.S. Attorney to alter the facts and elements of the original arrest and subsequent search and seizure.
5. That certain physical evidence for the defense was disregarded by the district judge in his considerations.
6. That government's claim of an Inventory Search was based and constructed on false testimony and insufficient physical evidence. Whereas in reality there was no proper inventory search that led to the discovery of counterfeit notes in question.
7. That appellants were possibly pressured, coerced and deceived into entering guilty plea.
8. That appellant's contentions and arguments are supported by records, minutes, transcripts, and exhibits of the honorable District Court.
9. And also that appellant's Constitutional Rights were grossly violated.

REFERENCES TO POINTS RAISED IN
CONTENTIONS

A. IN REFERENCE TO POINT ONE:

As the court records and minutes will show, defendant Nicholas twice asked to address the honorable court concerning relevant points of law and argument that defendant wanted taken into consideration by the honorable court, and also to be given the opportunity to complete relevant and legal oral arguments that were not yet completely carried out prior to District judge rendering decision on said Motion to Suppress Evidence. Said request to court being made by defendant in view of the fact that court appointed counsel continually flatly refused to do so, knowing that said points of law and oral arguments were relevant, and in order, to properly insure adequate defense. And to both requests that were made to address the court by defendant Nicholas, the district judge purposely delayed said address until after he had completed his summation and rendered judgement on said hearing. After which defendant Nicholas was granted another request to address the court. For which he did, inserting said points of law and oral argument in and for the record. After which the honorable judge Stewart remarked "why didn't you say something sooner", or something to that affect as the record will show. Of which the defendant reminded him that he had asked him twice to do so. And in view of the aforesaid it is Appellant's opinion that said hearing was incomplete. At the time of which, appellant made an oral motion to the district judge to order a rehearing on those grounds. To which said oral motion was denied. As the record will show.

B. IN REFERENCE TO POINT TWO:

As the record will show, the defendant Nicholas submitted an oral motion to the court requesting the dismissal and release of any further representation by court appointed counsel Allen Stim, citing reasons aforementioned in Point Two of appellant's contentions. Namely, and as the record will show, refusing to use points of law to attack falsely claimed inventory search, to wit: Peoples vs. Granna, Colo. 1974, 527 P. 2nd 543. And also not bringing to the court's attention the contents of defense exhibit A.

Said request being done without any arguments to the contrary by said attorney. Due to the fact that said ~~that~~ attorney knew said accusations of incompetency were true. Only reply counsel made was " I have no objections".

C. IN REFERENCE TO POINT 3:

To wit: The testimony given by the former United States ~~Magistrate~~ ^{Attorney}, Mr. Nicholas Figueroa, which appears on page 155 of the transcript. Which tells the true circumstances surrounding the original arrest. And which is unquestionably supported by defense exhibit A. Said testimony confirming that notes were discovered at the time and scene of arrest, and also where in auto said notes were discovered.

D. IN REFERENCE TO POINT 4:

Certain government witnesses being, the original arresting officers, New York City Patrolmen Patrick Santoli and Francis Kellmann, who testified and lied under oath that counterfeit notes in question were not discovered at scene of arrest, as was the fact, but discovered later after the auto and defendants were taken to the precinct at which time notes in question were supposedly discovered during an 'inventory search' of vehicle. Which was the direct opposite of the truth as related in the testimony of former United States ~~Magistrate~~ ^{Attorney} Mr. Nicholas Figueroa, Defendant George Nicholas, government witness James Brown, and as to what was recorded in Patrick Santoli's original complaint marked as defendant's exhibit A. Which clearly stated that "...Counterfeit notes were found in auto occupied by defendants at time of there arrest". Also the court records will show that patrolman Santoli admitted to his being briefed prior to testifying by the U. S. Attorney Mr. Haley concerning the testimony to be given concerning the original arrest. Said briefing obviously directed towards the altering of facts and elements concerning the original arrest. Aforementioned being done following Judge Stewart's directing Mr. Haley to conc^entration of his attention on the question of 'inventory search', when it was brought to the court's attention and knowledge that defendant's written Supplemental Motion to Suppress Evidence was based on the Supreme Court's decision in the case of Chadwick vs. U.S.

Also the appellants would like to bring to this honorable court's attention that none of the government's exhibits (reports, invoices, inventory listings, etc.) indicated that notes in question were discovered any time after the original arrest, as the oral testimony of arresting officers Santoli and Kellmann intends to indicate. ^A said false testimony of patrolmen was the only thing that went contrary to the actual facts and truths.

concerning the elements and circumstances surrounding the original arrest.

Also the appellants wish this honorable court to consider the fact that the government witness James Brown testified that he clearly saw the notes in the patrolmen's possession before we arrived to the precinct.

E. IN REFERENCE TO POINT 5:

Said physical evidence being Defense Exhibit A. and certain irrelevant invoices and inventory listings that were of the government's exhibits. Where defense exhibit A. (being the original complaint of the arrest, prepared by officer Santoli, to which, let it be noted, that he testified to the contrary), clearly showed and stated that said notes in question were indeed discovered at the time and place of arrest.

And in relation to government's exhibits (namely invoices and inventory listings), let it be noted, that none of the aforesaid contained the listing of counterfeit notes in question or the shaving kit that said notes were contained in, due to the fact that said shaving kit containing said counterfeit notes were discovered at the time and scene of original arrest, and not during falsely claimed inventory search that supposedly occurred after defendants and auto were brought to the precinct as patrolmen's false testimony attempts to indicate. All of which proves and supports the 6th point of appellant's contentions.

F. IN REFERENCE TO POINT 6:

(See E., IN REFERENCE TO POINT 5, and D., IN REFERENCE TO POINT 4)

G. IN REFERENCE TO POINT 7:

Appellant states that following the outcome of the Pre-trial Motion to Suppress Evidence Hearing that defendants George Nicholas and Vincent Brown along with attorneys, Allen Stim and Alton Wiley, U.S. Attorney Haley, Judge Stewart, and Court stenographer retired to the judge's chambers to discuss the possibility of continuing the trial proceedings until adequate defense for trial could be prepared due to the fact that both defense attorneys had only prepared for said Motion to Suppress Hearing. Also to discuss the possibility of getting a re-hearing on the pre-trial motion in view of the fact that said hearing had been incomplete because of the afore mentioned reasons as stated in the first part of appellant's Contentions. To which both requests were denied. Appellant Nicholas also stated that he had arranged for additional counsel to represent him at trial, but that said

counsel was from out of town and could not arrive for a few days, and asked for a continuance of trial until such time. Said request was also denied. The judge demanded that said trial would commence immediately. A trial to which defendants and counsel stated they had not prepared for with adequate defense. But which defendants were willing to sit through if for no other reason than to preserve their rights guaranteeing the appeal of the district court's decision regarding the pre-trial Motion to Suppress Evidence hearing.

After the jury had been impaneled and dismissed till the following day, and the judge dismissed the court, the defendant's were approached by the U.S. attorney and defense attorneys with the suggestion and proposition that if we plead guilty, that he, the U.S. attorney, would suggest to the judge that certain stipulations be added guaranteeing the right to appeal said court's decision concerning pre-trial motions, also that defendants would get a stay of the execution of sentence pending the decision of the appeals court, and that bond (same bond) would be continued until such time. And it was stated also that in view of certain promissory consideration that was due and promised the defendants, that said guilty plea would be convenient for all concerned. Raising the possibility of the more strenuous consequences that defendants would encounter were not said guilty plea entered. Meaning a higher appeal bond, and the disregarding of certain promissary consideration due defendants by the court for certain services and co-operation rendered by defendants in regards to said case that defendants had against them. And because of the aforesaid and on the advice of counsel that we would preserve all rights to appeal, the entering of said guilty plea was agreed upon by the defendants. At which time the judge was notified by the U.S. Attorney and after a brief conference by the U.S. Attorney and the judge, said guilty plea was entered by defendants under all conditions of the aforementioned. As the record will show.

In view of this however defendants being layman at law had never heard of appealing a guilty ~~verdict~~ plea, and mentioned such to both defense attorneys, to which attorney Allen Stim replied in the presence of Attorney Wiley And defendant Vincent Brown, that it was something new and that he had seen it written somewhere. Defendants although taking attorneys word for such, and

not wanting to accuse him of lying without written proof, still had some doubt and question concerning the advice given by counsel. Defendants meanwhile sought a delay in proceedings until they could notify additional counsel as to the soundness of the defense attorneys advice, but was told by both the U.S. Attorney and defense counsels that the so called advantageous arrangement would only be offered today and not tomorrow. Defendants not wanting to be put in a more complicated and disadvantageous situation, (the possibility of a higher appeal bond, and the revoking of promissary consideration, meaning no possibility of freedom upon sentencing), consented to the conditions and entered said guilty plea.

Appellants brings this to the attention of this honorable court's attention because appellant believes, being a layman at law, that there is the possibility that deception and dishonesty may have been used to coerce the appellants into entering said guilty plea. And if such was the case, appellants ask this honorable court for any and all remedies that are in order to correct the possible injustice that may have been done the appellants. Of which the appellants are guarded from by the 14th amendments of the U.S. Constitution.

And in view of the aforesaid (concerning G. IN REFERENCE TO POINT 7), appellants admits that the record will show only the stipulations made and not the larger contents of the aforesaid. However^{er} the appellants asks this honorable court to apply the wisdom and insight invested within this honorable court to see the relation between the content of the aforesaid and the stipulations that are of record and see that the stipulations and guilty plea could not have been arranged or consented to without the occurrence of the aforesaid.

H. IN REFERENCE TO POINT 8:

All of appellants arguments and contentions are part of the transcripts, minutes, records, and exhibits of the district court. Excepting certain parts of G. IN REFERENCE TO POINT 7, as appellants so state in said section.

I. IN REFERENCE TO POINT 9:

To wit: Appellant's 14th and 4th ammendments of his Constitutional Rights as guaranteed by the Constitution of the United States of America.

SUMMARY AND CONCLUSION

It is the appellant's opinion that without the government's witnesses (arresting officers of the New York Police Department, Santoli and Kellmann) tampering with, altering, and lying concerning the factual elements of the original arrest, that Appellant's case would indeed be within the scope and in accord with the decision of the Supreme Court as expressed in the case of Chadwick , to wit: United States V. Chadwick, 53 L Ed 2nd 538.

It is further the opinion of the appellant that aforementioned pre-trial motion to suppress evidence should have been granted, and that deciding factors of such hinged merely on the honorable court using realistic, honest and proper scrutiny to definitely determine and confirm the truths of certain testimonies and evidence given, and by doing so allowing in it's judgement only the truth to be weighed in rendering a decision, after said truth was established. Especially where said truth was conspicuously evident. Appellants also feels the court was unjust by accepting questionable testimony as truth and disregarding testimony of merit that was unquestionably true, just because it had the discretion to accept either.

It is also the opinion of the appellant that without these miscarriages of justice the court would not and could not have established the claim of a proper 'inventory search' taking place prior to the discovery of the counterfeit notes in question. Nor could the honorable court have accepted the government's claim of such, whereby putting the legal arguments of the defendants beyond and outside the scope of the Supreme Court decision as expressed in U.S. V. Chadwick, of which appellants believe was applicable to their case which is now before this Honorable court. And by the court using such a falsely constructed claim and accepting such as a proper inventory search it erred, and by doing so perpetuated a larger miscarriage of justice by violating the appellant's Constitutional Rights as guaranteed by the 4th and 14th amendments of the Constitution of the United States of America, as was so recently expressed by the honorable Justices of the United States Supreme Court when they rendered their decisions in the case of U.S.v Chadwick.

Wherefore Appellants requests this Honorable Court of Appeals, in view of all the aforesaid facts and contentions that compose this Supplemental Brief, to grant all remedies that are being sought by appellants, namely, the reversal of the

judgement of the district court's decision concerning the pre-trial Motion to Suppress Evidence, the vacating of guilty pleas, judgement of conviction, and sentences that stemmed from said errant denial of aforementioned pre-trial motions. Being that the aforesaid came about strictly because of Constitutional violations of the district court. For without said violations of the district court, appellants would not have entered a guilty plea or been compelled to enter a guilty plea 'of convenience' which was entered solely because of advice of court appointed counsel that such a plea with supposedly advantageous and favorable stipulations would be convenient for all concerned under the circumstances. And that said stipulations would guarantee the same rights of appeal that a trial would so guarantee. 'Convenient for all concerned', as explained by counsel meant convenient for both the defendants and government. Convenient for the defendants by eliminating the need to sit through a trial where a guilty verdict was ^{probably} already pre-destined, solely to preserve the right of appeal in the conventional manner. And convenient to, the government by saving the time and unnecessary expense that such a trial would duly entail.

Wherefore in light of all the aforesaid, appellant requests this Honorable Appeals Court for the 2nd Circuit to dispense all remedies sought in this Supplemental Brief that is now before this honorable court.

Subscribed and sworn to before me this
3 day of March 1978.

Signed

Notary

Signed

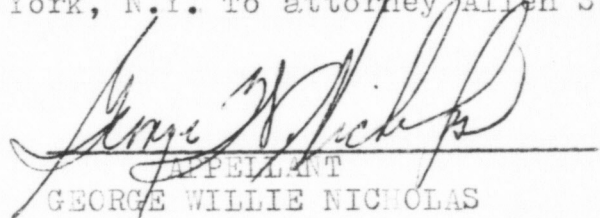
Appellant

Perote Officer - Authorized by
Act of July 2, 1960 to admin-
ister oaths to U.S. Citizens.

CERTIFICATE OF MAILING- DELIVERY

I George Willie Nicholas, being duly sworn deposes and says that I am the appellant in the foregoing Supplemental Brief to the Honorable United States Circuit Court of Appeals for the Second Circuit. And that the facts and contentions contained herein are factual and true to the best of my knowledge and belief.

That the foregoing Supplemental Brief has this 3rd day of March, 1978, been delivered to Mr. Haley, Assistant United States Attorney, United States Court, 207 U.S. Court House, Foley Square, New York, N.Y. To attorney Allen Stim, and to the clerk of the court.

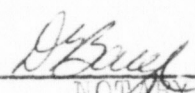

APPELLANT
GEORGE WILLIE NICHOLAS

06808

Box 1000

Lewichy Penn

SUBSCRIBED AND SWORN to before me this 3 day of March, 1978.


NOTARY PUBLIC
Parole Officer. Authorized by
Act of July 2, 1968 to admin-
ister oaths (18 U.S.C. 4004).

IN FORMA PAUPERIS AFFIDAVIT

*United States Court of Appeals
For the Second Circuit N.Y. N.Y.*
[Insert appropriate court]

United States

AFFIDAVIT IN SUPPORT
OF REQUEST
TO PROCEED
IN FORMA PAUPERIS

George W. Nicholas
(Movant)

I, *George Nicholas*, being first duly sworn, depose and say that I am the movant in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

I further swear that the responses which I have made to questions and instructions below are true.

1. Are you presently employed? Yes [] No [☒]
 - a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer.

 - b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?
- a. Business, profession or form of self-employment? Yes [] No [☒]
 - b. Rent payments, interest or dividends? Yes [] No [☒]
 - c. Pensions, annuities or life insurance payments? Yes [] No [☒]
 - d. Gifts or inheritances? Yes [] No [☒]
 - e. Any other sources? Yes [] No [☒]

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.

3. Do you own any cash, or do you have money in a checking or savings account?

Yes [] No [☒] (Include any funds in prison accounts)

If the answer is "yes," state the total value of the items owned.

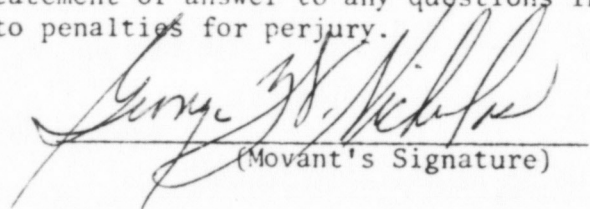
4. Do you own real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes [] No [☒]

If the answer is "yes," describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support. _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

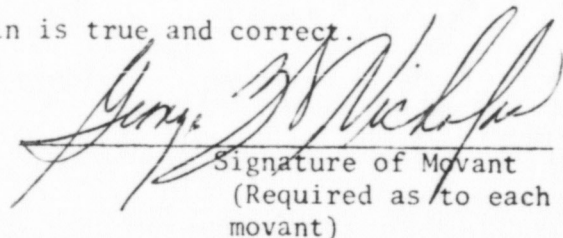

(Movant's Signature)

State of _____.

County (City) of _____.

_____, being first duly sworn
(Name of Movant)

under oath, presents that he has read and subscribed to the above and states that the information therein is true and correct.


Signature of Movant
(Required as to each
movant)

Subscribed and sworn to before me this

24

day of

March

, 1978.

[Signature]

Notary Public or other
person authorized to
administer an oath

Parole Officer - Authorized by
Act of July 7, 1955 to admin
ister oaths (18 U.S.C.4004)

CERTIFICATE

I hereby certify that the movant herein has the sum of \$110
on account to his credit at the USP, Lewisburg, Pa
institution where he is confined. I further certify that movant
likewise has the following securities to his credit according to
the records of said none institution:

[Signature]

Authorized Officer of
Institution

p1-248